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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/768,129	01/23/2001	Michael Weiss	SMB 2 0915	3324
7590	03/21/2007		EXAMINER	
James W. McKee Fay, Sharpe, Beall, Fagan Minnich & McKee, LLP 1100 Superior Avenue, 7th Floor Cleveland, OH 44114-2518			MILEF, ELDA G	
			ART UNIT	PAPER NUMBER
			3692	
SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE		
3 MONTHS	03/21/2007	PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/768,129	WEISS ET AL.	
	Examiner Elda Milef	Art Unit 3692	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 16 January 2007.  
 2a) This action is FINAL.      2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-17 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-17 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
     1. Certified copies of the priority documents have been received.  
     2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
     3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application |
|  | 6) <input type="checkbox"/> Other: _____                          |

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**DETAILED ACTION**

***Claim Objections***

1. Claim 1 is objected to because of the following informalities: "gents" should be --agents-- see line 19. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 1-7, 17 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter that was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Regarding claims 1, 3, 17, the Examiner acknowledges that resource adapters are described on pages 5-6 and figures 2A and 2B of the specification, however the resource adapters are not well defined. The Examiner assumes based on the pages 5-6 of the specification that resource adapter is a class used in

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objected oriented programming of the invention which provides for a uniform interface to access application programming interfaces of resources. It is unclear however, how this is accomplished.

Regarding claim 1: Furthermore, the applicant is claiming "instructions for creating." The Examiner could not find a description of the instructions for creating in the specification to enable one skilled in the art to make and/or use the invention. The specification discloses the operations of the agents and adapters but not the instructions for creating the agents and adapters i.e., software to make software.

Claims 2, 3-7 are rejected because of their dependency to the rejected claims.

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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The claim is unclear because it does not achieve the result disclosed in the preamble. This claim recites "creating" various items, it does not actually say that they are run or executed, so no bidding process is actually optimized.

Claims 2-7 are rejected because of their dependency to the rejected claims.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson (U.S. Patent No. 6,005,925) in view of Yee (U.S. Patent No. 6,738,975) in view of Baindur (U.S. Patent No. 6,073,176) in further view of Kou (U.S. Patent No. 6,363,365).

For examination purposes the Examiner is interpreting resource\_adapters to mean providing for a uniform interface to access application programming interfaces of resources and a

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caching adapter to mean storage of bid values using cache memory.

**Re claim 1:** Johnson disclose instructions for creating a bid manager agent for issuing a call for bids for usage of said resources, receiving said bids and selecting a best bid from among said bids, wherein each of said bids defines a predetermined context -see (bidding moderator, carriers)-see col. 3;

Instructions for creating a plurality of bidder agents for issuing said bids according to predetermined bidding policies in response to said call for bids ("carriers may submit bids)-see col. 3 lines 53-67;

Johnson does not specifically disclose a plurality of resource adapters for providing a uniform interface to access application program interfaces of said resources. Yee teaches ("On the one hand, the adapter half of each agent-adapter 200 uses the API of its particular application resource, or any other published interface mechanism...the agent and adapter mediate the differences in interface protocols and data structures, providing a uniform normalized view of the business events that they publish and consume...")-see col. 27 lines 13-39,figs. 4(a) and 4(b). It would have been obvious to one having ordinary skill in the art at the time the invention was

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made to modify Johnson to include an adapter in order to transform the data from one application so it can be used by other application.

Although Johnson disclose "The Moderator 1 receives the bids, processes them in its processor to produce carrier selection data, and enters both into a database in its memory by means of the data buses and registers internal to a computer...") - see col. 6 lines 35-51. Johnson and Yee do not specifically disclose issuing said cached bids to said bid manager agent instead of requiring said predetermined bidder agents to issue said bid, and a no-caching adapter for receiving from said bid manager agent said call for bids, re-issuing said call for bids to ones of said bidder agents other than said predetermined bidder agents, receiving said bids from said ones of said bidder agents other than said predetermined bidder agents and sending said bids to said bid manager agent. Baindur however, teaches ("a seed bid generally defines as one of the following Default: Only bid for a local call... default base value... Offload: Stack member bids for MLP bundle at all times...manual override: the stack member bids a user provided manual override, Forward-only: Do not bid for any bundle...") - see col. 16 line 66-col. 17 line 26. It would have been obvious to one having ordinary skill in

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the art at the time the invention was made to modify Johnson and Yee to include maintaining a default bid in memory to be used if desired by the bidder in order to provide the bidder with various bidding options according to the bidder's capacity to process the event efficiently.

Johnson, Yee, and Baindur do not explicitly disclose using cache to store bids. Kou however teaches bid cache-see figure 1 and col. 5 lines 65-67. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Johnson, Yee and Baindur to include using cache memory to store bids in order to quickly access the stored bid information.

**Re claim 2:** Johnson disclose instructions for updating bids in response to new contexts of said bids -see col. 10 lines 36-38. Although Johnson teaches that the bids are stored in memory by means of data buses, and registers internal to a computer-see col. 6 lines 35-38. Johnson, Yee, and Baindur does not specifically indicate that the bids are cached. Kou however teaches bid cache-see figure 1 and col. 5 lines 65-67. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Johnson, Yee and Baindur

to include using cache memory to store bids in order to quickly access the stored bid information.

**Re claim 3:** For purpose of examination, the Examiner is interpreting claim 3 to mean instructions for selecting the best bid by sorting according to decreasing values of said bids and selecting a first available one of said bidder agents. Johnson teaches ("The Moderator collects this bid information from all the Carriers, sorts it among originating points.-see col. 1 lines 61-63. Johnson do not specifically disclose sorting bids according to decreasing values. Official notice is taken that it is old and well known in the art of online auctions that sorting bid values according to decreasing value is old and well known. For example, in a reverse auction, a service provider will bid on a service such as airline tickets and the bids are sorted so that the least expensive price is displayed to the buyer. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Johnson, Yee, Baindur, and Kou to include sorting bids according to decreasing values as is old and well know in the art of online auctions in order to provide the buyer with the best price for a service.

**Re claim 4:** Johnson, Yee, and Kou do not specifically disclose wherein each said content is defined by a discrete

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parameter value. Baird however, teaches dynamic weighting criteria of bids.-see Abstract and col. 15 line 51-col. 16 line 12. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Johnson, Yee and Kou to include providing a weight to represent a bid as is taught by Baird in order to represent the capacity of the bidder to efficiently process the event.

**Re claim 5:** Johnson teaches sending a notification message to said bid manager agent in the event of any changes to its bidding policies, in response to which said bid manager agent updates said caching adapter. -see col. 4 line 29-col. 5 line 29.

**Re claim 6:** Johnson discloses wherein bidding policies are stored via said caching adapter as entries in a table and updating individual ones of said cached bids to reflect said changes in bidding policies. ("The manager keeps track of each carrier's charges and populates the routing table in the "least cost routing" software.")-see col. 1 lines 17-24 ("From the list of all Carriers providing bid information to the Moderator, each Subscriber can select those Carriers to which it wants traffic routed and can change that selection at any time. The Subscriber downloads the bid information and/or carrier selection information of those selected Carriers

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into the routing tables in its switch. ")-see col. 5 lines 7-19.

col.6 line 66-col. 7 line 25

**Re claim 7:** Johnson disclose wherein said bidding policies are stored via said caching adapter as general rules and clearing all of said cached bids.-see col. 12 lines 4-38.

**Re claims 8-16:** Further a method would have been necessary to perform the method of previously rejected claims 1-7 and are therefore rejected using the same art and rationale.

**Re claim 17:** Further an apparatus would have been necessary to perform the method of previously rejected claims 1-7 and are therefore rejected using the same art and rationale.

#### ***Response to Arguments***

4. Regarding the applicant's argument concerning the claims rejected under 35 U.S.C. 112, first paragraph, the rejection stands as the applicant has not provided support or explanation for resource adapters sufficient to allow an understanding of how to use the invention.

Regarding the applicant's argument concerning claims rejected under 35 USC 112, second paragraph, the rejection stands as the applicant has not clarified the meaning of "one of the resource adapters being a caching adaptor for maintaining cached bids." The applicant's suggests that this limitation is

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explained on p 7 lines 12-14 of the specification stating that a relationship is established between the caching adaptor and the resource adapter, however, merely establishing this relationship is not clarifying how a resource adaptor is a caching adapter for maintaining cached bids. The resource\_adapter is defined by the applicant as a class that provides a uniform interface to access APIs of resources on page 5 lines 30-31 of the specification. How is a caching adaptor a resource\_adapter providing a uniform interface to access APIs of resources?

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the cited references pertain to analogous art i.e. e-commerce, electronic auctions.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on

obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

**Conclusion**

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elda Milef whose telephone number is (571)272-8124. The examiner can normally be reached on Monday -Thursday 8:30 am to 4:30pm.

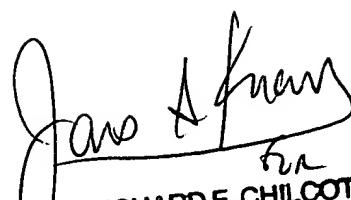
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on (571)272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Elda Milef  
Examiner  
Art Unit 3692

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RICHARD E. CHILCOT, JR.  
SUPERVISORY PATENT EXAMINER